MONTANA LEGISLATIVE HISTORY

Chapter 518 19 77

Bill H 31 S _____ Original bill & history ✓ C

H. Committee on Business & Industry

Hearing Date(s) 2/14 ✓ C
2/21 ✓ C
4/11 ✓ C
_____ ___ C

Date Out 4-11 ___ C

S. Committee on Judiciary - referred to Rules

Hearing Date(s) 4/8 ✓ C
_____ ___ C
_____ ___ C
_____ ___ C

Did this bill originate in an interim committee? ___Yes ✓ No

Committee _____ Report _____

BUSINESS & INDUSTRY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 17	To clarify sections 64-305 and 71-1305.1, R.C.M. 1947	1/04/77	Marks	1/07/77 canceled 1/12/77	DO PASS	1/13/77
HB 31	Recodification and revision of certain chapters of R.C.M. 1947, relating to unfair trade practices	1/04/77	Bardanouve	1/07/77 canceled 2/14/77	TABLED	2/14/77
HB 40	To generally revise and clarify the laws relating to minerals, oil and gas	1/04/77	Kvaalen	1/07/77 canceled 1/12/77	DO PASS	1/18/77
HB 42	For the general revision and clarification of laws relating to professional and occupational licensing	1/04/77	Kvaalen	1/07/77 canceled 1/12/77	DO PASS	1/13/77
HB 49	To require retailers using computerized check-out systems to disclose the price of consumer commodities . . .	1/04/77	Bradley	1/10/77	AS SO AMENDED DO NOT PASS	1/18/77
HB 58	To extend the provisions of the state building code to cover private residential buildings in compliance with safety regulations contained in the state building code	1/04/77	Holmes	1/10/77	DO NOT PASS	2/01/77

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MAY 23 '77

HOUSE BILL NO. 31

INTRODUCED BY BARDANOUVE

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE RECODIFICATION AND GENERAL REVISION OF CHAPTERS 1 AND 4 OF TITLE 51, R.C.M. 1947, RELATING TO UNFAIR TRADE PRACTICES, AND TO AMEND SECTION 84-2412, R.C.M. 1947, TO STRIKE THE REFERENCE TO THE UNFAIR PRACTICES ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 51-117, R.C.M. 1947, is renumbered 51-501, and is amended to read as follows:

"~~51-117~~ 51-501. ~~Construction of act~~ Purpose. The legislature declares that the purpose of this ~~act~~ chapter is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This ~~act~~ chapter shall be literally construed so that its beneficial purposes may be subserved."

Section 2. There is a new R.C.M. section numbered 51-502 that reads as follows:

51-502. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Department" means the department of business regulation provided for in 82A-401.

(2) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade or profession, any product or service of a public utility, and any product of the soil.

(3) "Cost" as applied to production includes the cost of raw materials, labor, and all overhead expenses of the producer.

(4) "Cost" as applied to distribution means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is lesser, less all trade discounts except customary cash discounts, plus the cost of doing business by the vendor.

(5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when such vendor pays for merchandise within a limited or specified time.

(6) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes, without being limited to, the following items of expense:

(a) labor (including salaries of executives and

officers);

(b) rent;

(c) interest on borrowed capital;

(d) depreciation;

(e) selling cost;

(f) maintenance of equipment;

(g) delivery costs;

(h) credit losses;

(i) all types of licenses;

(j) taxes;

(k) insurance and advertising.

(7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person.

(9) "Business" includes any person, as defined in (7), domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

Section 3. Section 51-102, R.C.M. 1947, is renumbered 51-503, and is amended to read as follows:

"~~51-102~~ 51-503. Persons ~~deemed~~ responsible. Any person

who, either as director, officer, or agent of any firm or corporation or as agent of any person, ~~violating the provisions of this act,~~ assists or aids, directly or indirectly, in ~~such~~ a violation of this chapter ~~shall be~~ is responsible therefor equally with the person, firm, or corporation for whom or which he acts.

~~In the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts.~~"

Section 4. There is a new R.C.M. section numbered 51-504 that reads as follows:

51-504. Proof of intent. In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts.

Section 5. There is a new R.C.M. section numbered 51-505 that reads as follows:

51-505. Unlawful restraint of trade. It is unlawful for a person or group of persons, directly or indirectly:

(1) to enter an agreement for the purpose of fixing the price or regulating the production of an article of commerce;

(2) for the purpose of creating or carrying out any

restriction in trade, to:

(a) limit productions;

(b) increase or reduce the price of merchandise or commodities;

(c) prevent competition in the distribution or sale of merchandise or commodities;

(d) fix a standard or figure whereby the price of an article of commerce intended for sale, use, or consumption will be in any way controlled;

(e) agree to add to a bid for any contract an amount, fixed by percentage or otherwise, for the purpose of making a refund or sharing costs of bidding with any other bidder;

(f) return a part of any amount added to a bid by collusive agreement among bidders to any person;

(g) create a monopoly in the manufacture, sale, or transportation of an article of commerce;

(h) enter into an agreement which binds any person not to manufacture, sell, or transport an article of commerce below a common standard or figure or which keeps such article or transportation at a fixed or graduated figure or by which the price of such article is settled so as to preclude unrestricted competition.

Section 6. Section 51-402, R.C.M. 1947, is renumbered 51-506, and is amended to read as follows:

"~~51-402~~ 51-506. ~~Certain agreements between laborers~~

Labor excepted. The provisions of ~~this act~~ 51-505 do not apply to any arrangements, agreement, or combination between laborers~~,~~ made with the object of lessening the number of hours of labor or increasing wages."

Section 7. There is a new R.C.M. section numbered 51-507 that reads as follows:

51-507. Unfair competition in sales. (1) It is unlawful for any business, with the intent to destroy the competition of any regular established dealer of any article of commerce or to prevent the competition of any person who in good faith intends or attempts to become such dealer, to discriminate between different localities in this state by selling or furnishing such article at a lower rate in one locality than in another, after making allowance for difference, if any, in the grade, quality, quantity, and actual cost of transportation from the point of production or manufacture of the article.

(2) This section does not prohibit the meeting in good faith of a competitive rate or prevent a reasonable classification of service by public utilities for the purpose of establishing rates.

(3) The prohibition against locality discrimination includes any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in

violation of the spirit and intent of this section.

(4) Willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in a contract entered into under this section, whether or not the person so advertising, offering for sale, or selling is a party to such contract, is unfair competition, and a person damaged thereby may bring an action.

Section 8. There is a new R.C.M. section numbered 51-508 that reads as follows:

51-508. Unfair competition in purchasing. (1) Any business which, for the purpose of creating a monopoly or destroying the business of a regularly established dealer or preventing the competition of any person who in good faith intends or attempts to become such dealer discriminates between different persons or localities of this state by purchasing any article of commerce at a higher rate or price in one locality than in another, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution and for the difference in the grade and quality of such article, is guilty of unfair discrimination, which is prohibited and unlawful.

(2) Proof that any person has paid a higher rate or price for any article of commerce in one locality than in another, after making due allowance for the difference in the actual cost of transportation and for the difference in the grade and quality of such article, shall be prima facie evidence of a violation of this section.

(3) The payment of a higher rate or price in one locality than in another, after making such allowance provided above, is not unfair discrimination provided such higher rate or price is paid for the purpose of meeting the rate or price set by a competitor in such locality. The burden of proof of such fact is upon the person charged with unfair discrimination.

Section 9. There is a new R.C.M. section numbered 51-509 that reads as follows:

51-509. Sales at less than cost forbidden. It is unlawful for a vendor to sell, offer for sale, or advertise for sale any article of commerce at less than the cost thereof to the vendor, or to give, offer to give, or advertise the intent to give away any article of commerce for the purpose of injuring competitors and destroying competition.

Section 10. There is a new R.C.M. section numbered 51-510 that reads as follows:

51-510. Cost survey as evidence of cost. Whenever a particular trade or industry, of which the person complained against is a member, has an established cost survey for the

locality in which the offense is committed, such cost survey is competent evidence to be used in proving the costs of the person complained against.

Section 11. Section 51-114, R.C.M. 1947, is renumbered 51-511, and is amended to read as follows:

"~~51-114~~ 51-511. ~~Procedure for establishing~~ Establishing cost survey ~~hearing notice~~. (1) The department shall, whenever application has been made by ~~ten (10)~~ or more persons~~, firms, or corporations~~ within a particular trade or business, establish the cost survey provided for in ~~section 51-105~~ 51-510. When petition for a cost survey has been so presented to the department, the department shall, as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established, and if so, upon the matter of establishing such cost survey. The hearing shall be held at the office of the department and upon that notice which the department may ~~by rule require~~ require by rule. However, notice of the hearing shall be published for at least ~~two (2)~~ successive weeks in the daily newspaper or newspapers as the department may designate as most commonly circulated in the counties to be affected by the cost survey. The notice shall further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person~~, firm, or corporation~~ may appear and be heard by the department upon all questions to be determined by it as provided in this section. If the department determines that a cost survey ~~shall~~ should be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected, determine and delimit the particular area within which the trade or business ~~shall~~ will be affected, and find and determine the probable "cost of doing business" or "overhead expense~~,~~", stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person~~, firm, or corporation~~ in the trade or business within the area.

(3) ~~Where~~ If the department determines that the probable "cost of doing business" or "overhead expense~~,~~" stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person~~, firm, or corporation~~ in the trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined shall be presumed to be the actual "cost of doing business" and "overhead expense" of any person~~, firm, or corporation~~ in the trade or

business and within the area affected by the cost survey."

Section 12. Section 51-104, R.C.M. 1947, is renumbered 51-512, and is amended to read as follows:

"~~51-104~~ 51-512. ~~Enforced~~ Forced sales not basis of cost price. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of ~~said~~ the article or product purchased at a forced, bankrupt, closeout ~~sale~~, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of ~~said~~ sale of ~~said~~ the article or product replaced through the ordinary channels of trade, unless:

(1) ~~said~~ the article or product is kept separate from goods purchased in the ordinary channels of trade; ~~and unless said~~

(2) the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, or closeout sale, or by means other than through the ordinary channels of trade, and ~~said~~ such advertising ~~shall state~~ states the conditions under which ~~said~~ the goods were ~~so~~ purchased, and the quantity of ~~such~~ merchandise to be sold or offered for sale."

Section 13. Section 51-107, R.C.M. 1947, is renumbered 51-513, and is amended to read as follows:

"~~51-107~~ 51-513. ~~Exceptions~~ Sales excepted. ~~The~~

~~provisions of sections~~ Sections ~~51-103, 51-104 and 51-105 shall~~ 51-509, 51-510, and 51-512 do not apply to any sale made:

~~(a)~~(1) ~~In~~ in closing out in good faith, the owner's stock or any part thereof, for the purpose of discontinuing his trade in any ~~such stock or commodity, and in the case of the sale~~ article of commerce;

(2) of seasonal goods; ~~or to the bona fide sale~~

(3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

~~(b)~~(4) ~~When~~ when the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

~~(c)~~(5) ~~By~~ by an officer acting under the orders of any court;

~~(d)~~(6) ~~In~~ in ~~an~~ a good faith endeavor ~~made in good faith~~ to meet the legal prices of a competitor ~~as herein defined~~ selling the same article ~~or product, or service or output of a service trade,~~ of commerce in the same locality or trade area; or

~~(e)~~(7) ~~To~~ to the state of Montana or any of its institutions.

~~Any person, firm or corporation who performs work upon, renovates, alters or improves any personal property belonging to another person, firm or corporation, shall be~~

~~construed to be a vendor within the meaning of this act.~~"

Section 14. Section 51-106, R.C.M. 1947, is renumbered 51-514, and is amended to read as follows:

"~~51-106~~ 51-514. Fair price for agricultural products~~, how determined~~. (1) The following method shall be used in determining fair prices for agricultural products sold on local markets~~,~~ in a trade area, district, or city in which the major portion of an agricultural commodity or product is produced within or adjacent to the trade area, city, or district:

(a) When ~~seventy-five percent (75%)~~ of the producers of an agricultural product or commodity marketing those products or commodities within a trade area, district, or city determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be ~~considered~~ the fair price for that product or commodity under the terms of this ~~act~~ chapter.

(b) Those producers through their agents shall file with the department the fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of the agricultural products or commodities. ~~Any~~ An organization representing consumers may not be denied representation at the ~~meeting~~ hearing.

(2) After the establishment of a schedule of fair prices for the agricultural products or commodities, it is a

violation of this ~~act~~ chapter for a producer, jobber, wholesaler, or retailer to sell or buy an agricultural commodity or product below the price established by the department. ~~That~~ Such action is punishable under the terms provided in this ~~act~~ chapter."

Section 15. Section 51-108, R.C.M. 1947, is renumbered 51-515, and is amended to read as follows:

"~~51-108~~ 51-515. Rebates forbidden~~--co-operatives~~. (1) The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and ~~where~~ when such payment or allowance tends to destroy competition, is an unfair trade practice and any person~~, firm, partnership, corporation, or association~~ resorting to such trade practice ~~shall be deemed~~ is guilty of a misdemeanor and on conviction ~~thereof shall be~~ is subject to the penalties set out in ~~section 51-112~~ 51-524.

~~Provided, however, that~~ (2) However, nothing in this ~~act shall~~ section ~~prevent~~ prevents a ~~co-operative~~ cooperative association, organized and operating on a true ~~co-operative~~ cooperative basis, from returning to the members, producers, or consumers the whole or any part of

the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association."

Section 16. Section 51-411, R.C.M. 1947, is renumbered 51-516, and is amended to read as follows:

"~~51-411~~ 51-516. Pooling ~~in purchase, sale or handling~~ of grain ~~by warehousemen~~ prohibited. (1) It ~~shall be~~ is unlawful for any person~~, firm, or corporation~~ engaged in the buying, selling, or handling of grain in any public local warehouse in this state~~,~~ or for the local agent in charge of such warehouse~~,~~ or any other agent of the person~~, firm, or corporation~~ operating the same~~,~~ to enter into ~~any~~ a contract, agreement, ~~combination~~, or understanding with any other person~~, firm, or corporation~~, owning or operating any other public local warehouse at any railway station~~,~~ or with its agent ~~or agents~~, whereby:

(a) the amount of grain to be received or handled by ~~said~~ the warehouses at such station ~~or stations shall~~ is to be equalized or pooled between ~~said~~ the warehouses; ~~or whereby~~

(b) the profits or earnings derived from ~~said~~ the warehouses ~~shall~~ are to be divided, ~~or~~ pooled, or apportioned in any manner~~,~~; or ~~whereby~~

(c) the price to be paid for any kind of grain~~,~~ at such station~~,~~ ~~shall~~ is to be fixed or in any manner

affected~~;~~, ~~and each~~

(2) Each day of the continuance of any such agreement, contract, or understanding ~~shall constitute~~ constitutes a separate offense."

Section 17. Section 51-413, R.C.M. 1947, is renumbered 51-517, and is amended to read as follows:

"~~51-413~~ 51-517. Destruction of food ~~in restraint of trade~~. It ~~shall be~~ is unlawful for any person~~, firm, or corporation~~ to destroy~~,~~ or to withhold from sale for a period of time which makes it necessary to destroy, in restraint of trade, any fish, fowl, animal, vegetable, or other ~~stuff, products~~ product~~,~~ or ~~articles~~ article~~,~~ which ~~are~~ is customary ~~food~~, or ~~which are~~ proper food for human beings~~,~~ and ~~are~~ is in fit sanitary condition to be used as such."

Section 18. Section 51-116, R.C.M. 1947, is renumbered 51-518, and is amended to read as follows:

"~~51-116~~ 51-518. Alteration of invoices ~~unlawful~~ prohibited. It is unlawful for a person~~, partnership, firm, corporation, joint stock company, or other association, as defined in section 51-103~~,~~ to change, alter, substitute, or falsify an invoice ~~where~~ if the practice tends to injure a competitor, ~~or to~~ destroy competition, or ~~to~~ mislead a court or the department ~~of business regulation~~. ~~That~~ Such practice is unfair trade practice and a person~~, firm, partnership,~~

~~corporation, or association~~ resorting to that trade practice is guilty of a misdemeanor and is subject to the penalties provided in ~~section 51-112~~ 51-524."

Section 19. Section 51-113, R.C.M. 1947, is renumbered 51-519, and is amended to read as follows:

"~~51-113~~ 51-519. ~~Department -- administration of act by intervention orders review appeals process finality of order~~ Enforcement by department. (1) The department shall prevent a person~~, firm, or corporation~~ from violating any of the provisions of this chapter.

(2) Upon receiving notice that a person~~, firm or corporation~~ is violating or has violated any of the provisions of this chapter, the department shall immediately ~~notify~~ direct the person giving ~~that~~ the notice either to appear before the director of the department or to make a written reply to show probable cause of ~~that~~ a violation. If probable cause is shown, the department ~~must then~~ shall:

(a) make its own investigation; ~~and~~

(b) within ~~sixty (60)~~ days of the finding of probable cause ~~must~~ make a written report of its investigation; and ~~must~~

(c) mail a copy of its findings to the person initially giving notice of a violation.

(3)(a) If~~, after an investigation~~ the department, after an investigation, has reason to believe that the

person~~, firm, or corporation~~ has been or is engaging in any course of conduct or doing any act in violation of this chapter and if it appears to the department that a proceeding by it would be ~~to~~ in the interest of the public, it shall issue and serve upon the person~~, firm or corporation~~ a complaint stating ~~its~~ the charges ~~in that respect,~~ and containing a notice of a hearing ~~upon a day and~~ at a place ~~therein fixed~~ and upon a day not less than ~~five (5)~~ days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time ~~five (5)~~ days prior to the issuance of an order based on it.

(c) The person~~, firm or corporation~~ so complained ~~of~~ against may appear at the place and time so fixed and show cause why an order should not be entered by the department requiring ~~that~~ such person~~, firm, or corporation~~ to stop the violation of the law charged in the complaint.

(d) Any person~~, firm or corporation~~ may make application, and upon good cause shown may be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding shall be reduced to writing and filed ~~in the office of~~ with the department.

(f) If upon the hearing the department believes that the act or conduct in question is prohibited by this

chapter, it shall make ~~a report~~ findings of fact in writing ~~in which it shall state its findings as to the facts~~ and ~~shall~~ issue and cause to be served on ~~that~~ the person~~, firm, or corporation~~ charged an order requiring ~~that~~ such person~~, firm, or corporation~~ to stop the acts or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, ~~as hereinafter provided,~~ the department may at any time, upon the notice and in the manner ~~as~~ it considers proper, modify or set aside, in whole or in part, ~~any~~ a report or ~~any~~ an order made or issued by it under this section.

(4) A court reviewing an order of the department may issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the department.

(6) Proceedings ~~in the district court~~ under this section shall be given precedence over other civil cases pending ~~therein~~ in the district court~~,~~ and shall be in every way expedited.

(7) A person~~, firm, or corporation~~ who violates an order of the department ~~to cease and desist~~ after it has

become final~~,~~ and while the order is in effect shall forfeit and pay to ~~this~~ the state a penalty of not more than ~~one thousand dollars ($1,000)~~ for each violation~~, which shall accrue to this state and may be recovered in a civil action brought by this state.~~

(8) The remedies and method of enforcement of this chapter provided for in this section are concurrent and in addition to the other remedies provided in this chapter."

Section 20. Section 51-115, R.C.M. 1947, is renumbered 51-520, and is amended to read as follows:

"~~51-115~~ 51-520. ~~Hearings and investigations -- contempts~~ Investigations. (1) The department~~,~~ for the purpose of conducting hearings and investigations which~~,~~ in the opinion of the department~~,~~ are necessary and proper for the exercise of the powers vested in it by this chapter~~,~~ ~~has the following powers:~~

~~(1) The department~~ shall at all reasonable times have access to~~, for the purpose of examination, and the right to copy~~ any evidence ~~of~~ concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy such evidence. ~~Any member of the~~ The department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question~~,~~ before the

department, or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department ~~In~~ in ~~any~~ a case of contumacy or refusal to obey a subpoena issued to a person, ~~any~~ a district court of this state, within ~~any~~ the district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found, ~~or~~ resides, or transacts business, ~~upon application by the department~~ has jurisdiction to issue to that person, an order requiring him to appear before the department, or its duly authorized agent, and ~~there~~ to produce evidence if so ordered, or ~~there~~ to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. An individual may not be

prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled, to testify or produce evidence, after having claimed his privilege against ~~self-incrimination~~ self-incrimination, ~~to testify or produce evidence, except that an~~ An individual so testifying is not exempt from prosecution and punishment for perjury committed in testifying."

Section 21. Section 51-111, R.C.M. 1947, is renumbered 51-521, and is amended to read as follows:

"~~51-111~~ 51-521. ~~Who may enjoin violations~~ Injunctions — damages — production of evidence. (1) Any person, ~~firm, private corporation or municipal or other public corporation, or trade association,~~ if injured thereby, may maintain an action to enjoin a continuance of ~~any~~ an act ~~or acts~~ in violation of ~~sections 51-101 to 51-108, inclusive, if injured thereby,~~ 51-505 through 51-518, and for the recovery of damages. If, in such action, the court ~~shall find~~ finds that the defendant is violating or has violated any of the provisions of ~~sections 51-101 to 51-108, inclusive~~ 51-505 through 51-518, it shall enjoin the defendant from a continuance thereof. It ~~shall~~ is not ~~be~~ necessary ~~that~~ to allege or prove actual damages to the plaintiff ~~be alleged or proved~~.

(2) In addition to such injunctive relief, the

plaintiff ~~in said action shall be~~ is entitled to recover from the defendant three times the amount of ~~the~~ actual damages~~, if any,~~ sustained.

(3) ~~Any~~ A defendant in an action brought under ~~the provisions of~~ this section may be required to testify under the ~~provisions of the Code~~ Montana Rules of Civil Procedure ~~of this state,~~. ~~In~~ In addition the books and records of any such defendant may be brought into court and introduced~~, by reference, into evidence~~ into evidence by reference. ~~provided, however, that no~~ No information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under ~~the provisions of sections 51-101 to 51-108, inclusive, and 51-112~~ 51-505 through 51-518 and 51-524."

Section 22. Section 51-110, R.C.M. 1947, is renumbered 51-522, and is amended to read as follows:

"~~51-110~~ 51-522. ~~Illegal contracts--recovery~~ Recovery on illegal contracts forbidden. ~~Any~~ A contract, express or implied, made by ~~any~~ a person~~, firm or corporation~~ in violation of any of the provisions of ~~sections 51-101 to 51-108, inclusive,~~ 51-505 through 51-518 is ~~declared to be~~ an illegal contract and no recovery thereon ~~shall~~ may be had."

Section 23. Section 51-109, R.C.M. 1947, is renumbered 51-523, and is amended to read as follows:

"~~51-109~~ 51-523. ~~Attorney general~~ Department to institute suit~~, when~~. Upon the third violation of any of the provisions of ~~sections 51-101 to 51-108, inclusive,~~ 51-505 through 51-518 by any corporation, ~~it shall be the duty of~~ the ~~attorney general~~ department ~~to~~ shall institute proper suits or quo warranto proceedings in ~~any~~ a court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges, and powers exercised by such corporation~~,~~ and to permanently enjoin it from transacting business in this state. If in such action the court ~~shall find~~ finds that ~~such~~ the corporation is violating or has violated any of the provisions of ~~sections 51-101 to 51-108, inclusive,~~ 51-505 through 51-518, it ~~must~~ shall enjoin ~~said~~ the corporation from doing business in this state permanently or for such time as the court ~~shall order~~ orders, or ~~must~~ shall annul the charter~~,~~ or revoke the franchise of such corporation."

Section 24. There is a new R.C.M. section numbered 51-524 that reads as follows:

51-524. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer, or director, who violates any of the provisions of 51-505 through 51-518, is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than $100 or more than $1,000 or imprisoned for a

term not to exceed 6 months or both.

(2) A violation of 51-505 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding $25,000 or both.

(3) When there is a violation of 51-516, in addition to the penalty specified in (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture, and that department shall revoke any license issued to the person so convicted. In such case no new license may be granted to the person whose license is revoked, nor to anyone either directly or indirectly engaged with him in such business, for a period of 1 year.

Section 25. Section 8-103.4, R.C.M. 1947, is amended to read as follows:

"8-103.4. Approval of carrier agreements. (1) Any carrier as defined in ~~section~~ 8-101(h) which is a party to an agreement between or among two ~~(2)~~ or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules pertaining thereto, or procedures for the joint consideration, initiation or establishment

thereof, may, under such rules as the commission prescribes, apply to the public service commission for approval of the agreement and the commission shall by order approve any agreement, if approval thereof is not prohibited by subsections (3), (4), or (5) of this section. The approval of the commission shall be granted only upon such terms and conditions as the commission may prescribe as necessary to enable it to grant its approval in accordance with this subsection.

(2) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission and the provisions of this section, shall maintain such accounts, records, files, and memoranda and shall submit to the commission such reports, as may be prescribed by the commission, and all such accounts, records, files, and memoranda shall be subject to inspection by the commission or its duly authorized representative.

(3) The commission may not approve under this section any agreement between a carrier by highway and a carrier by rail unless it finds that such agreement is of the character described in this section and is limited to matters relating to the transportation under joint rates or over through routes.

(4) The commission may not approve under this section

any agreement which it finds is an agreement with respect to pooling or division of traffic, service, or earnings.

(5) The commission may not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

(6) The commission may, upon complaint or upon its own initiative without complaint, investigate and determine whether any agreement previously approved by it under this section, or any terms or conditions upon which such approval was granted, is not in conformity with this section or whether any such ~~term~~ terms or conditions ~~is~~ are not necessary for the purpose of conformity with this section. After such investigation, the commission may by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with this section, and may modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with this section or to the extent it finds its terms and conditions unnecessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, may

be postponed for such period as the commission determines is reasonably necessary to avoid undue hardship.

(7) No order may be entered under this section except after interested parties have been afforded reasonable opportunity for hearing.

(8) The parties to any agreement approved by the commission under this section and other persons are, if the approval of such agreement is not prohibited by subsections (3), (4), or (5) of this section, hereby exempted from Montana antitrust laws with respect to such agreement, including ~~section 51-401~~ chapter 5, Title 51 or any other statutes prohibiting monopolies, price fixing, or restraint of trade.

(9) Any action of the commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or in prescribing terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of subsection (8)."

Section 26. Section 82A-401.1, R.C.M. 1947, is amended to read as follows:

"82A-401.1. Functions of department. The department and its units are responsible for administering laws

pertaining to business regulation, including, but not limited to, laws pertaining to:

(1) ~~Banks~~ banks and banking (Title 5, chapters 1 through 14);

(2) ~~Building~~ building and loan associations (Title 7, chapter 1);

(3) ~~Credit~~ credit unions (Title 14, chapter 1);

(4) ~~Consumer~~ consumer protection (Title 85, chapter 4);

(5) ~~Supervision~~ supervision of the milk industry (Title 27, chapter 4);

(6) ~~Consumer~~ consumer loans (Title 47, chapter 2);

(7) ~~Sale~~ sale and marketing of coal (Title 50, chapter 6);

(8) ~~Unfair~~ unfair business practices (Title 51, chapter ~~4~~ 5);

(9) ~~Regulation~~ regulation of petroleum products (Title 60, chapter 2);

(10) ~~Retail~~ retail installment sales (Title 74, chapter 6);

(11) ~~Standard~~ standard weights and measures (Title 90, chapter 1);

(12) ~~Proprietary~~ proprietary ~~post-secondary~~ postsecondary educational institutions (Title 75, chapter 92)."

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Section 27. Section 82A-404, R.C.M. 1947, is amended to read as follows:

"82A-404. Board of trade abolished -- functions transferred. (1) The board of trade, provided for in ~~title~~ Title 27, chapter 3, is abolished and its functions in ~~title~~ Title 51, chapter ~~4~~ 5 ~~(pertaining to the Unfair Practices Act)~~ are transferred to the department of business regulation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of food distributors or the board of trade means the department of business regulation."

Section 28. Section 84-2412, R.C.M. 1947, is amended to read as follows:

"84-2412. Employment of help -- disposal of license money. The ~~state~~ department of revenue is hereby authorized to employ such clerical and field assistance as ~~may be found~~ necessary to carry out and to administer the provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, with ~~five dollars ($5)~~ of the fee collected from each store license sold credited to an earmarked revenue fund for administration of ~~the Unfair Practices Act~~ chapter 5, Title 51, by the department of business regulation and the rest to the credit of the general fund."

Section 29. Repealer. Sections 51-101, 51-101.1,

51-103, 51-105, 51-112, 51-118, 51-401, 51-403, 51-404, 51-405, 51-406, 51-407, 51-408, 51-409, 51-410, 51-412, and 51-414, R.C.M. 1947, are repealed.

-End-

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 14, 1977

The meeting was called to order at 10:10 a.m. in Room 434 with all members present with the exception of Reps. Quilici and Bradley, who were excused.

House Bill No. 535 was discussed. Rep. Williams, chief sponsor, gave an explanation of the bill and an explanation of the amendments. He then introduced Mr. Chris Johansen with the Farmer's Union. Mr. Johansen stated that it would give the Department of Agriculture authority. It is the only business enterprise in Montana in which the legislature sets the rates to be charged. Rather than the legislature setting the rates it would be much easier for the Department to do it (testimony attached).

Mr. Elroy Legure, Mr. George Lackman, and Rep. Tower were also in support of this bill.

Rep. Williams, in closing, stated he would recommend the committee give a do pass vote on this piece of legislation.

Chairman Vincent stated that he would take care of House Bill No. 31 in executive session.

House Bill No. 384 was discussed. Rep. Uhde, chief sponsor, stated the bill was simple. He gave a brief explanation of the bill.

Ms. Virginia Jellison, social worker, stated she had been in the housing development for non-profit corporation for 8 years. She also stated that the people with a low income and social problems need more than just a manager of an apartment complex. It takes someone who can do more than simply collect rent and pay the bills. It is a different job than regular apartment management would be.

Rep. Dussault also expressed her support in the matter.

Mr. Walter Jacovich stated that they were not trying to step on the realtors fingers. The position deals with a multitude of things. Property such as this deals with day to day problems of living with individuals in a very close community. One would have to be a surveyor, contractor, financial wizard, budget director, and a relations psychologist.

Ms. Doris Richter stated she could not see where the realtor could handle this type of situation.

There were no opponents or questions from the committee.

House Bill No. 520 was discussed. Rep. Fagg gave an explanation of the bill, in which he stated it is a case for the morticians.

Mr. Don Pratt stated that the insurance would be handled by insurance agents. Also, the bill provides for selling of formal insurance in

Montana.

Ms. Jo Driscoll testified as a opponent (testimony attached).

Mr. Pratt answered questions on the policy. If a person died and the body was never found, or if the person simply died; the beneficiary would respect the wish in which the policy states.

House Bill No. 764 was discussed. Rep. Ramirez, sponsor, gave an explanation of the bill. He stated that the 1955 law has been ignored statewide. It would let the cities do the licensing.

There were no proponents or opponents.

Rep. Ellison asked if the clerks had to be bonded. Rep. Ramirez responded by saying the auctioneer was the only one who needed to be bonded. He stated he did not see anything wrong with the clerk being bonded.

Rep. Ellison stated a case in which a truck was sold at an auction and the man did not pay for it. The burden then would be on the auctioneer, therefore, the clerk should be bonded.

House Bill No. 760 was discussed. Rep. Ellison, sponsor, gave an explanation of the bill. He gave a bizarre incident in Livingston in which 30 bodies were taken out of the mausoleum. This goes back in history of this cemetery where the first owner died and it was sold to another man. The cemetery was in ordinary financial order, but this man bought four or five cemeteries in the state, sold the vaults and markers then pocketed the money. He bought a ticket to South America. This bill would provide surity bonds so there would be some assurance of timely performance of contractual obligations. The insurance companies would then have the incentive to track these people down.

Mr. Gary Marks stated that the bill would provide protection for people against anyone who is not intending to live up to his obligations. Mr. Harold Adams concurred in Mr. Marks' testimony.

The committee then went into executive session.

Rep. Harper moved to TABLE House Bill No. 31. The motion carried unanimously.

Rep. Tower moved that House Bill No. 535 DO PASS. The motion carried with all members present voting yes.

Rep. Fabrega moved that House Bill No. 384 DO PASS. The motion passed unanimously.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 21, 1977

The meeting was called to order at 10:15 a.m. with all members present with the exception of Reps. Shelden and Bradley, who were excused.

House Bill No. 597 was discussed. Rep. Stobie, sponsor, gave a brief explanation of the bill.

Mrs. Esther M. Lawyer and Ms. Jane Barry expressed their support in the bill (testimonies attached).

Mr. Gary Brown, Division of Forestry, expressed his opposition in the matter. He stated that the fundamental issue that the committee is dealing with is not the best trees grown or the nursery which can supply them to the various farmer, rather it is the question in which the state nursery is in competition with taxpaying people. The bill would require that the Christmas tree companies engage in a profit in which they become a private sector (testimony attached).

Mr. Brown stated that the State nursery does not make a profit in selling of trees. The State nursery operates at a loss and the funds come from the general funds.

House Bill No. 536 was discussed. Rep. Severson, sponsor, gave a very brief explanation of the bill. There were no opponents or proponents or questions.

House Bill No. 487 was discussed. Rep. Eudaily, chief sponsor, gave a brief explanation of the bill.

Mr. Rod Gudgel, proponent, read a letter from the Pharmaceutical Association (attached). The Board should have latitude to set an additional fee.

There were no opponents.

Rep. Eudaily stated in closing that it is an alternative program. There is a choice of home study courses. Would be well to commend the man for keeping up with his studies.

Rep. Eudaily stated there would be an additional fee of $100 which would cover the cost of the Advisory Council.

The committee then went into executive session.

Rep. Aageson moved that House Bill No. 31 be taken off the table. After a short discussion, he withdrew his motion.

Rep. Fagg moved that House Joint Resolution No. 55 DO PASS. The motion carried unanimously.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

April 11, 1977

The meeting was called to order at 1:00 p.m. with all members present with the exception of Reps. Quilici, Bradley, Harper, Harrington, Fabrega, Fagg and Tower, who were excused.

Rep. Scully moved that House Bill No. 31 DO PASS. The motion carried with all members voting yes, with the exception of Rep. Tropila.

The meeting adjourned at 1:05 p.m.

JOHN C. VINCENT, Chairman

MINUTES

SENATE RULES COMMITTEE

The Senate Rules Committee met on April 18, 1977 in room 331 of the capitol. Senator Stephens called the meeting to order at 3:00 p.m. All members were present. Also present was Diana Dowling, Legislative Council and Senator Goodover.

Senator Stephens said that under discussion today were three bills. HJR 106, HB 39 and HB 31.

Senator Mathers moved that HJR 106 be accepted and that it be assigned to second reading. Motion seconded by Senator Thiessen and approved by a voice vote unanimously.

Senator Murphy moved that HB 39 be referred to second reading with the recommendation that it be concurred in. This motion was also approved unanimously by a voice vote.

Diana Dowling briefly explained House Bill 31. She stated that because another bill had been killed, they had to bring this bill back because it is a recod bill.

Senator Goodover then spoke. He stated that the main reason that he moved that it come to the Rules Committee was that it had the same language as 304, and he thought it could not be considered.

A motion was made and approved unanimously that the Rules Committee recommend to the Senate that vote of 2/3 majority to take action on HB 31 be made and that if it passes, it be placed on second reading.

There being no further business, the meeting was adjourned at 3:15 p.m.

Respectfully submitted,

Jo Ann F. Owens

Jo Ann F. Owens, Secretary

Terry Murphy

Sen. Terry Murphy, V-Chairman

SENATE RULES COMMITTEE

ROLL CALL VOTE ON _____ DATE 4/18/77

Present	Absent	Name of Member	Aye	No	Not Voting
✓		HAZELBAKER, Frank			
✓		McOMBER, Gordon			
✓		MATHERS, Bill			
✓		MURPHY, Terry V-Chm.			
✓		ROBERTS, Joe			
✓		STEPHENS, Stan, Chm.			
✓		THIESSEN, Cornie			
✓		TURNAGE, Jean			

_____
Secretary

MOTION:

Diana Dowling, Leg. Council
Sen. Gardner

Fourteenth district: Meagher, Wheatland, Golden Valley, and Musselshell counties.

Fifteenth district: Roosevelt, Daniels, and Sheridan counties.

Sixteenth district: Custer, Carter, Fallon, Prairie, Powder River, Garfield, and Rosebud counties.

Seventeenth district: Phillips and Valley counties.

Eighteenth district: Gallatin *County.*

Nineteenth district: Lincoln County."

Section 2. Section 93-302, R.C.M. 1947, is amended to read as follows:

"**93-302. Number of judges.** In each judicial district there must be the following number of judges of the district court, who must be elected by the qualified voters of the district and whose term of office must be 6 years: *in* the first, second, eleventh, sixteenth, *and eighteenth,* two judges each*;* in the *fourth and eighth,* three judges*; in the thirteenth, four judges;* and in all other districts, one judge each."

Section 3. New judges — how selected. The judgeships created by this act in previously existing districts shall be filled initially at the 1978 general election and shall take office on January 1, 1979. The judge in the 19th judicial district shall be appointed by the governor under the provisions of 93-705 through 93-717.

Approved April 29, 1977.

CHAPTER NO. 518

AN ACT FOR THE RECODIFICATION AND GENERAL REVISION OF CHAPTERS 1 AND 4 OF TITLE 51, R.C.M. 1947, RELATING TO UNFAIR TRADE PRACTICES, AND TO AMEND SECTIONS 8-103.4, 82A-401.1, 82A-404, AND 84-2412, R.C.M. 1947, TO STRIKE THE REFERENCE TO THE UNFAIR PRACTICES ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 51-117, R.C.M. 1947, is renumbered 51-501, and is amended to read as follows:

"**51-501. Purpose.** The legislature declares that the purpose of this *chapter* is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This *chapter* shall be literally construed *so* that its beneficial purposes may be subserved."

Section 2. There is a new R.C.M. section numbered 51-502 that reads as follows:

51-502. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Department" means the department of business regulation provided for in 82A-401.

(2) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade or any product of the soil. A product or service of a public utility is not included within the term "article of commerce".

(3) "Cost" as applied to production includes the cost of raw materials, labor, and all overhead expenses of the producer.

(4) "Cost" as applied to distribution means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is lesser, less all trade discounts except customary cash discounts, plus the cost of doing business by the vendor.

(5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when such vendor pays for merchandise within a limited or specified time.

(6) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes, without being limited to, the following items of expense:

(a) labor (including salaries of executives and officers);

(b) rent;

(c) interest on borrowed capital;

(d) depreciation;

(e) selling cost;

(f) maintenance of equipment;

(g) delivery costs;

(h) credit losses;

(i) all types of licenses;

(j) taxes;

(k) insurance and advertising.

(7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person.

(9) "Business" includes any person, as defined in (7), domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

Section 3. Section 51-102, R.C.M. 1947, is renumbered 51-503, and is amended to read as follows:

"**51-503. Persons responsible.** Any person who, either as director, officer, or agent of any firm or corporation or as agent of any person, assists or aids, directly or indirectly, in *a* violation *of this chapter is* responsible therefor equally with the person, firm, or corporation for whom or which he acts."

Section 4. There is a new R.C.M. section numbered 51-504 that reads as follows:

51-504. Proof of intent. In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts.

Section 5. There is a new R.C.M. section numbered 51-505 that reads as follows:

51-505. Unlawful restraint of trade. It is unlawful for a person or group of persons, directly or indirectly:

(1) to enter an agreement for the purpose of fixing the price or regulating the production of an article of commerce;

(2) for the purpose of creating or carrying out any restriction in trade, to:

(a) limit productions;

(b) increase or reduce the price of merchandise or commodities;

(c) prevent competition in the distribution or sale of merchandise or commodities;

(d) fix a standard or figure whereby the price of an article of commerce intended for sale, use, or consumption will be in any way controlled;

(e) agree to add to a bid for any contract an amount, fixed by percentage or otherwise, for the purpose of making a refund or sharing costs of bidding with any other bidder;

(f) return a part of any amount added to a bid by collusive agreement among bidders to any person;

(g) create a monopoly in the manufacture, sale, or transportation of an article of commerce;

(h) enter into an agreement which binds any person not to manufacture, sell, or transport an article of commerce below a common standard or figure or which keeps such article or transportation at a fixed or graduated figure or by which the price of such article is settled so as to preclude unrestricted competition.

Section 6. Section 51-402, R.C.M. 1947, is renumbered 51-506, and is amended to read as follows:

"**51-506. Labor excepted.** The provisions of *51-505* do not apply to any arrangements, agreement, or combination between laborers made with the object of lessening the number of hours of labor or increasing wages."

Section 7. There is a new R.C.M. section numbered 51-507 that reads as follows:

51-507. Unfair competition in sales. (1) It is unlawful for any business, with the intent to destroy the competition of any regular established dealer of any article of commerce or to prevent the competition of any person who in good faith intends or attempts to become such dealer, to discriminate between different localities in this state by selling or furnishing such article at a lower rate in one locality than in another, after making allowance for difference, if any, in the grade, quality, quantity, and actual cost of transportation from the point of production or manufacture of the article.

(2) This section does not prohibit the meeting in good faith of a competitive rate or prevent a reasonable classification of service by public utilities for the purpose of establishing rates.

(3) The prohibition against locality discrimination includes any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section.

(4) Willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in a contract entered into under this section, whether or not the person so advertising, offering for sale, or selling is a party to such contract, is unfair competition, and a person damaged thereby may bring an action.

Section 8. There is a new R.C.M. section numbered 51-508 that reads as follows:

51-508. Unfair competition in purchasing. (1) Any business which, for the purpose of creating a monopoly or destroying the business of a regularly established dealer or preventing the competition of any person who in good faith intends or attempts to become such dealer discriminates between different persons or localities of this state by purchasing any article of commerce at a higher rate or price in one locality than in another, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution and for the difference in the grade and quality of such article, is guilty of unfair discrimination, which is prohibited and unlawful.

(2) Proof that any person has paid a higher rate or price for any article of commerce in one locality than in another, after making due allowance for the difference in the actual cost of transportation and for the difference in the grade and quality of such article, shall be prima facie evidence of a violation of this section.

(3) The payment of a higher rate or price in one locality than in another, after making such allowance provided above, is not unfair dis-

crimination provided such higher rate or price is paid for the purpose of meeting the rate or price set by a competitor in such locality. The burden of proof of such fact is upon the person charged with unfair discrimination.

Section 9. There is a new R.C.M. section numbered 51-509 that reads as follows:

51-509. Sales at less than cost forbidden. It is unlawful for a vendor to sell, offer for sale, or advertise for sale any article of commerce at less than the cost thereof to the vendor, or to give, offer to give, or advertise the intent to give away any article of commerce for the purpose of injuring competitors and destroying competition.

Section 10. There is a new R.C.M. section numbered 51-510 that reads as follows:

51-510. Cost survey as evidence of cost. Whenever a particular trade or industry, of which the person complained against is a member, has an established cost survey for the locality in which the offense is committed, such cost survey is competent evidence to be used in proving the costs of the person complained against.

Section 11. Section 51-114, R.C.M. 1947, is renumbered 51-511, and is amended to read as follows:

"**51-511. Establishing cost survey.** (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, establish the cost survey provided for in *51-510*. When petition for a cost survey has been so presented to the department, the department shall, as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established, *and if so, upon the matter of establishing such cost survey*. The hearing shall be held at the office of the department and upon that notice which the department may require *by rule*. However, notice of the hearing shall be published for at least 2 successive weeks in the daily newspaper or newspapers as the department may designate as most commonly circulated in the counties to be affected by the cost survey. The notice shall further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by it as provided in this section. If the department determines that a cost survey *should* be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected, determine and delimit the particular area within which the trade or business *will* be affected, and find and determine the probable "cost of doing business" or "overhead expense", stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the trade or business within the area.

(3) *If* the department determines that the probable "cost of doing business" or "overhead expense" stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the

trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined shall be presumed to be the actual "cost of doing business" and "overhead expense" of any person in the trade or business and within the area affected by the cost survey."

Section 12. Section 51-104, R.C.M. 1947, is renumbered 51-512, and is amended to read as follows:

"**51-512. Forced sales not basis of cost price.** In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of *the* article or product purchased at a forced, bankrupt, closeout, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of *the* date of sale of *the* article or product replaced through the ordinary channels of trade, unless*:*

(1) the article or product is kept separate from goods purchased in the ordinary channels of trade*;*

(2) the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, *or* closeout sale or by means other than through the ordinary channels of trade, and *such* advertising *states* the conditions under which *the* goods were purchased and the quantity of merchandise to be sold or offered for sale."

Section 13. Section 51-107, R.C.M. 1947, is renumbered 51-513, and is amended to read as follows:

"**51-513. Sales excepted.** *Sections 51-509, 51-510, and 51-512 do* not apply to any sale made:

(1) in closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any *article of commerce;*

(2) of seasonal goods*;*

(3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(4) when the goods are damaged or deteriorated in quality and notice is given to the public thereof;

(5) by an officer acting under the orders of any court;

(6) in a good faith endeavor to meet the legal prices of a competitor selling the same article *of commerce* in the same locality or trade area; *or*

(7) to the state of Montana or any of its institutions."

Section 14. Section 51-106, R.C.M. 1947, is renumbered 51-514, and is amended to read as follows:

"**51-514. Fair price for agricultural products.** (1) The following method shall be used in determining fair prices for agricultural products

sold on local markets in a trade area, district, or city in which the major portion of an agricultural commodity or product is produced within or adjacent to the trade area, city, or district:

(a) When 75% of *the* producers of an agricultural product or commodity marketing those products or commodities within a trade area, district, or city determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be the fair price for that product or commodity under the terms of this *chapter.*

(b) Those producers through their agents shall file with the department the fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of the agricultural products or commodities. *An* organization representing consumers may not be denied representation at the *hearing.*

(2) After the establishment of a schedule of fair prices for the agricultural products or commodities, it is a violation of this *chapter* for a producer, jobber, wholesaler, or retailer to sell or buy an agricultural commodity or product below the price established by the department. *Such* action is punishable under the terms provided in this *chapter.*"

Section 15. Section 51-108, R.C.M. 1947, is renumbered 51-515, and is amended to read as follows:

"**51-515. Rebates forbidden.** *(1)* The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and *when* such payment or allowance tends to destroy competition, is an unfair trade practice and any person resorting to such trade practice *is* guilty of a misdemeanor and on conviction *is* subject to the penalties set out in *51-524.*

(2) However, nothing in this *section prevents* a *cooperative* association, organized and operating on a true *cooperative* basis, from returning to the members, producers, or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association."

Section 16. Section 51-411, R.C.M. 1947, is renumbered 51-516, and is amended to read as follows:

"**51-516. Pooling of grain prohibited.** *(1)* It *is* unlawful for any person engaged in the buying, selling, or handling of grain in any public local warehouse in this state or for the local agent in charge of such warehouse or any other agent of the person operating the same to enter into *a* contract, agreement, or understanding with any other person owning or operating any other public local warehouse at any railway station *or with* its agent whereby*:*

(a) the amount of grain to be received or handled by *the* warehouses at such station *is to* be equalized or pooled between *the* warehouses;

(b) the profits or earnings derived from *the* warehouses *are to* be divided, pooled, or apportioned in any manner*;* or

(c) the price to be paid for any kind of grain at such station *is to* be fixed or in any manner affected.

(2) Each day of the continuance of any such agreement, contract, or understanding *constitutes* a separate offense."

Section 17. Section 51-413, R.C.M. 1947, is renumbered 51-517, and is amended to read as follows:

"**51-517. Destruction of food.** It *is* unlawful for any person to destroy or to withhold from sale for a period of time which makes it necessary to destroy, in restraint of trade, any fish, fowl, animal, vegetable, or other *product* or *article* which *is* customary or proper food for human beings and *is* in fit sanitary condition to be used as such."

Section 18. Section 51-116, R.C.M. 1947, is renumbered 51-518, and is amended to read as follows:

"**51-518. Alteration of invoices prohibited.** It is unlawful for a person to change, alter, substitute, or falsify an invoice *if* the practice tends to injure a competitor, destroy competition, or mislead a court or the department. *Such* practice is unfair trade practice and a person resorting to that trade practice is guilty of a misdemeanor and is subject to the penalties provided in *51-524.*"

Section 19. Section 51-113, R.C.M. 1947, is renumbered 51-519, and is amended to read as follows:

"**51-519. Enforcement by department.** (1) The department shall prevent a person from violating any of the provisions of this chapter.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this chapter, the department shall immediately *direct* the person giving *the* notice either to appear before the director of the department or to make a written reply to show probable cause of *a* violation. If probable cause is shown, the department *shall:*

(a) make its own investigation;

(b) within 60 days of the finding of probable cause make a written report of its investigation; and

(c) mail a copy of its findings to the person initially giving notice of a violation.

(3) *(a)* If the department, *after an investigation,* has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this chapter and if it appears to the department that a proceeding by it would be *in* the interest of the public, it shall issue and serve upon the person a complaint stating *the* charges and containing a notice of a hearing at a place *and upon a day* not less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on it.

(c) The person so complained *against* may appear at the place and time

so fixed and show cause why an order should not be entered by the department requiring *such* person to stop the violation of the law charged in the complaint.

(d) Any person may make application and upon good cause shown may be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding shall be reduced to writing and filed *with* the department.

(f) If upon the hearing the department believes that the act or conduct in question is prohibited by this chapter, it shall make *findings of fact* in writing and issue and cause to be served on *the* person *charged* an order requiring *such* person to stop the acts or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, *a* report or *an* order made or issued by it under this section.

(4) A court reviewing an order of the department may issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pending *the outcome of* the suit.

(5) To the extent that the order of the department is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the department.

(6) Proceedings *under this section* shall be given precedence over other civil cases pending *in the district court* and shall be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to *the* state a penalty of not more than $1,000 for each violation.

(8) The remedies and method of enforcement of this chapter provided for in this section are concurrent and in addition to the other remedies provided in this chapter."

Section 20. Section 51-115, R.C.M. 1947, is renumbered 51-520, and is amended to read as follows:

"**51-520. Investigations.** *(1)* The department, for the purpose of conducting hearings and investigations which in the opinion of the department are necessary and proper for the exercise of the powers vested in it by this chapter, shall at all reasonable times have access to any evidence *concerning* a person being investigated or proceeded against that relates to any matter under investigation or in question *and the right to copy such evidence. The* department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive

evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) *Upon application by the department in a* case of contumacy or refusal to obey a subpoena issued to a person, *a* district court of this state, within *the* district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found, resides, or transacts business, has jurisdiction to issue to that person an order requiring him to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. An individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled *to testify or produce evidence,* after having claimed his privilege against *self-incrimination. An* individual so testifying is not exempt from prosecution and punishment for perjury committed in testifying."

Section 21. Section 51-111, R.C.M. 1947, is renumbered 51-521, and is amended to read as follows:

"**51-521. Injunctions — damages — production of evidence.** *(1)* Any person *if injured thereby, or the attorney general,* may maintain an action to enjoin a continuance of *an* act in violation of *51-505 through 51-518, and* for the recovery of damages. If in such action the court *finds* that the defendant is violating or has violated any of the provisions of *51-505 through 51-518,* it shall enjoin the defendant from a continuance thereof. It *is* not necessary *to allege or prove* actual damages to the plaintiff.

(2) In addition to such injunctive relief, the plaintiff *is* entitled to recover from the defendant three times the amount of actual damages sustained.

(3) A defendant in an action brought under this section may be required to testify under the *Montana Rules* of Civil Procedure. *In* addition the books and records of any such defendant may be brought into court and introduced *into evidence by reference. No* information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under *51-505 through 51-518 and 51-524.*"

Section 22. Section 51-110, R.C.M. 1947, is renumbered 51-522, and is amended to read as follows:

"**51-522. Recovery on illegal contracts forbidden.** *A* contract, express or implied, made by *a* person in violation of any of the provisions of *51-505 through 51-518* is an illegal contract and no recovery thereon *may* be had."

Section 23. Section 51-109, R.C.M. 1947, is renumbered 51-523, and is amended to read as follows:

"**51-523. Department to institute suit.** Upon the third violation of any of the provisions of *51-505 through 51-518* by any corporation, the *department shall* institute proper suits or quo warranto proceedings in *a* court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges, and powers exercised by such corporation and to permanently enjoin it from transacting business in this state. If in such action the court *finds* that *the* corporation is violating or has violated any of the provisions of *51-505 through 51-518,* it *shall* enjoin *the* corporation from doing business in this state permanently or for such time as the court *orders*, or *shall* annul the charter or revoke the franchise of such corporation."

Section 24. There is a new R.C.M. section numbered 51-524 that reads as follows:

51-524. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer, or director, who violates any of the provisions of 51-505 through 51-518, is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than $100 or more than $1,000 or imprisoned for a term not to exceed 6 months or both.

(2) A violation of 51-505 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding $25,000 or both.

(3) When there is a violation of 51-516, in addition to the penalty specified in (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture, and that department shall revoke any license issued to the person so convicted. In such case no new license may be granted to the person whose license is revoked, nor to anyone either directly or indirectly engaged with him in such business, for a period of 1 year.

Section 25. Section 8-103.4, R.C.M. 1947, is amended to read as follows:

"**8-103.4. Approval of carrier agreements.** (1) Any carrier as defined in 8-101(h) which is a party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules as the commission prescribes, apply to the public service commission for approval of the agreement and the commission shall by order approve any agreement, if approval thereof is not prohibited by subsections (3), (4), or (5) of this section. The approval of the commission shall be granted only upon such terms and conditions as the commission may prescribe as necessary to enable it to grant its approval in accordance with this subsection.

(2) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission and the provisions of this section, shall maintain such accounts, records, files, and memoranda and shall submit to the commission such reports, as may be prescribed by the commission, and all such accounts, records, files, and memoranda shall be subject to inspection by the commission or its duly authorized representative.

(3) The commission may not approve under this section any agreement between a carrier by highway and a carrier by rail unless it finds that such agreement is of the character described in this section and is limited to matters relating to the transportation under joint rates or over through routes.

(4) The commission may not approve under this section any agreement which it finds is an agreement with respect to pooling or division of traffic, service, or earnings.

(5) The commission may not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

(6) The commission may, upon complaint or upon its own initiative without complaint, investigate and determine whether any agreement previously approved by it under this section, or any terms or conditions upon which such approval was granted, is not in conformity with this section or whether any such *terms* or conditions *are* not necessary for the purpose of conformity with this section. After such investigation, the commission may by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with this section, and may modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with this section or to the extent it finds its terms and conditions unnecessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, may be postponed for such period as the commission determines is reasonably necessary to avoid undue hardship.

(7) No order may be entered under this section except after interested parties have been afforded reasonable opportunity for hearing.

(8) The parties to any agreement approved by the commission under this section and other persons are, if the approval of such agreement is not prohibited by subsections (3), (4), or (5) of this section, hereby exempted from Montana antitrust laws with respect to such agreement, including *chapter 5, Title 51* or any other statutes prohibiting monopolies, price fixing, or restraint of trade.

(9) Any action of the commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or in prescribing terms

and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of subsection (8)."

Section 26. Section 82A-401.1, R.C.M. 1947, is amended to read as follows:

"**82A-401.1. Functions of department.** The department and its units are responsible for administering laws pertaining to business regulation, including, but not limited to, laws pertaining to:

(1) *banks* and banking (Title 5, chapters 1 through 14);

(2) *building* and loan associations (Title 7, chapter 1);

(3) *credit* unions (Title 14, chapter 1);

(4) *consumer* protection (Title 85, chapter 4);

(5) *supervision* of the milk industry (Title 27, chapter 4);

(6) *consumer* loans (Title 47, chapter 2);

(7) *sale* and marketing of coal (Title 50, chapter 6);

(8) *unfair* business practices (Title 51, chapter *5*);

(9) *regulation* of petroleum products (Title 60, chapter 2);

(10) *retail* installment sales (Title 74, chapter 6);

(11) *standard* weights and measures (Title 90, chapter 1);

(12) *proprietary postsecondary* educational institutions (Title 75, chapter 92)."

Section 27. Section 82A-404, R.C.M. 1947, is amended to read as follows:

"**82A-404. Board of trade abolished — functions transferred.** (1) The board of trade, provided for in *Title* 27, chapter 3, is abolished and its functions in *Title* 51, chapter *5* are transferred to the department of business regulation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of food distributors or the board of trade means the department of business regulation."

Section 28. Section 84-2412, R.C.M. 1947, is amended to read as follows:

"**84-2412. Employment of help — disposal of license money.** The department of revenue is hereby authorized to employ such clerical and field assistance as necessary to carry out and to administer the provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, with $5 of the fee collected from each store license sold credited to an earmarked revenue fund for administration of *chapter 5, Title 51,* by the department of business regulation and the rest to the credit of the general fund."

Section 29. **Repealer.** Sections 51-101, 51-101.1, 51-103, 51-105,

51-112, 51-118, 51-401, 51-403, 51-404, 51-405, 51-406, 51-407, 51-408, 51-409, 51-410, 51-412, and 51-414, R.C.M. 1947, are repealed.

Approved April 29, 1977.

CHAPTER NO. 519

AN ACT TO REVISE AND CLARIFY CERTAIN LAWS GOVERNING THE FIRE MARSHAL BUREAU; DIRECTING ESTABLISHMENT OF A FIRE MARSHAL ADVISORY COUNCIL; AMENDING SECTIONS 82-1201 AND 82-1202, R.C.M. 1947; AND REPEALING SECTION 82A-1208, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1201, R.C.M. 1947, is amended to read as follows:

"**82-1201. Fire marshal — fire prevention advisory commission.** (1) There is *a* fire marshal *bureau in the department of justice* which is under the supervision and control of the *attorney general.*

(2) The *chief of the* fire marshal *bureau* shall be appointed by the *attorney general* add shall serve at his pleasure. *The chief of the fire marshal bureau is the state fire marshal.*

(3) A person appointed state fire marshal shall *have*:

(a) at least 10 years of progressively responsible experience in fire protection;

(b) a *2-year associate* degree in *fire protection* engineering from a recognized institution of higher education and 2 years' experience in fire protection; or

(c) a degree from a recognized institution of higher education in fire protection engineering or fire protection technology.

(4) *The attorney general shall create a fire marshal advisory council in accordance with procedures provided in 82A-110.*"

Section 2. Section 82-1202, R.C.M. 1947, is amended to read as follows:

"**82-1202. Powers and duties of state fire marshal.** *(1) For the purpose of reducing the state's fire loss, the* state fire marshal shall:

(a) make at least one inspection *a* year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety*;*

(b) make at least one inspection *a* year of each unit of the Montana university system and submit a copy of the report to the *commissioner of higher education* with recommendations in regard to fire prevention, fire protection, and public safety*;*